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15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 ENTROPIC COMMUNICATIONS, LLC,

18 Plaintiff,

19 v.

20 DISH NETWORK CORPORATION, *et al.*,

21 Defendants.

22 ENTROPIC COMMUNICATIONS, LLC,

23 Plaintiff,

24 v.

25 COX COMMUNICATIONS, INC., *et al.*,

26 Defendants.

27 Case No.: 2:23-cv-01043-JWH-KES  
28 (Lead Case)

Case No.: 2:23-cv-01047-JWH-KES  
(Related Case)

Case No.: 2:23-cv-01048-JWH-KES  
(Related Case)

Case No.: 2:23-cv-05253-JWH-KES  
(Related Case)

**PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR  
RECONSIDERATION OF  
COURT'S ORDER ON  
COMCAST'S MOTION TO  
DISMISS [DE 132] PURSUANT TO  
LOCAL RULE 7-18;  
MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT THEREOF;  
DECLARATION OF CASSIDY  
YOUNG IN SUPPORT THEREOF;  
[PROPOSED] ORDER**

Date: January 5, 2023  
Time: 9:00 AM  
Courtroom: 9D (Santa Ana)

1 ENTROPIC COMMUNICATIONS, LLC,

2 Plaintiff,

3 v.

4 COMCAST CORPORATION, *et al.*,

5 Defendants.

6 ENTROPIC COMMUNICATIONS, LLC,

7 Plaintiff,

8 v.

9 DIRECTV, LLC, *et al.*,

10 Defendants.

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1 **TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on January 5, 2023, or as soon thereafter as  
 3 this matter may be heard, in Courtroom 9D of the United States District Court for the  
 4 Central District of California, located at 411 W. 4th Street, Santa Ana, California 92701,  
 5 Plaintiff Entropic Communications, LLC (“Entropic”) will, and hereby does, move the  
 6 Court for reconsideration of its Order (Docket Entry (“DE”) 132) granting the motion  
 7 to dismiss filed by Defendants Comcast Cable Communications Management, LLC;  
 8 Comcast Corporation; and Comcast Cable Communications, LLC (collectively,  
 9 “Comcast”). This Motion is made pursuant to Local Rule 7-18, on the grounds that  
 10 there was a manifest failure to consider material facts and law presented to the Court  
 11 before its Order was entered. In particular, the Court’s Order does not reflect that the  
 12 supplemental briefing (DE 126) and related argument was considered in reaching the  
 13 conclusions set forth in the Order nor was it addressed in such Order.

14 This Motion is made following a conference of counsel pursuant to Local Rule  
 15 7-3 that took place on December 1, 2023.<sup>1</sup> The Parties thoroughly discussed the  
 16 substance and potential resolution of the Motion by telephone and in related  
 17 correspondence, but were unable to resolve their dispute. The Motion is based on this  
 18 Notice, the Memorandum of Points and Authorities attached hereto, the supporting  
 19 declaration, the complete Court files and records in this action, and all matters that may  
 20 be properly considered by the Court at the hearing on this Motion.

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22 <sup>1</sup> Due to short deadline for filing this Motion according to code and the inevitable delays  
 23 arising from the intervening Thanksgiving Holiday, Entropic sent an email to Comcast  
 24 to meet and confer on the motion for reconsideration on November 29, 2023. *See*  
 25 Young Decl. ¶ 6. December 1, 2023, was the first date on which Mr. Padmanabhan  
 26 stated he was available to meet and confer. *Id.* During the meet and confer, Entropic  
 27 offered to jointly request an extension of time to file its motion to give Comcast more  
 28 time to consider Entropic’s position; however, Comcast declined the offer and  
 suggested that additional time for consideration was not necessary. *Id.* ¶ 8. Indeed,  
 Comcast confirmed that the additional time would not change its position, which was  
 to oppose the Motion. *Id.* Accordingly, Entropic respectfully requests that the Court  
 grant its motion irrespective of the inability to meet and confer in strict compliance with  
 L.R. 7-3, since Comcast has suffered no prejudice from the delayed conferral, and no  
 material information is presented in the instant motion that diverts from Entropic’s oral  
 argument and supplemental briefing.

1  
2 Dated: December 4, 2023

Respectfully submitted,

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. INTRODUCTION

3 Entropic respectfully requests that the Court reconsider its Order granting  
4 Comcast's Motion to Dismiss to permit the parties to have the benefit of the Court's  
5 analysis of the issues raised at oral argument and in Supplemental Briefing.<sup>2</sup> The Order  
6 appears to have failed to consider or mention the dispositive issues raised at oral  
7 argument and in supplemental briefing regarding Comcast's jurisdictional arguments.  
8 As such, the Order is at odds with binding authority holding that a covenant not to sue  
9 does not deprive a court of subject matter jurisdiction over a patent infringement action  
10 brought by a patent holder. Indeed, that binding authority—including *Air Prod. &*  
11 *Chemicals, Inc. v. Reichhold Chemicals, Inc.*, 755 F.2d 1559 (Fed. Cir. 1985)—  
12 expressly states: “We hold, that where a non-frivolous complaint states a claim and  
13 seeks relief under the patent laws, exclusive jurisdiction in the federal courts is thereby  
14 established.” *Id.* at 1564. Thus, Entropic respectfully requests that the Court reconsider  
15 its Order and amend it to address this authority and related arguments, including the  
16 application of the *Air Prod. & Chemicals, Inc. v. Reichhold Chemicals, Inc.*, 755 F.2d  
17 1559 (Fed. Cir. 1985) line of cases to Comcast's Motion.<sup>3</sup>

## II. PROCEDURAL BACKGROUND

19 Entropic filed this action on February 10, 2023. Entropic's initial and First  
20 Amended Complaints asserted claims for patent infringement and that infringement was  
21 willful. *See* DE 1, 67.

<sup>2</sup> The following definitions are used in this brief: Plaintiff Entropic Communications, LLC (“Entropic” or “Plaintiff”); Defendants Comcast Cable Communications Management, LLC; Comcast Corporation; and Comcast Cable Communications, LLC (collectively, “Comcast” or “Defendants”).

<sup>3</sup> In its supplemental briefing, Entropic analyzed the following cases in connection to the Federal Circuit's *Air Products* decision: *Cooper Notification, Inc. v. Twitter, Inc.*, 545 F. App'x 959 (Fed. Cir. 2013); *Highway Equip. Co., Inc. v. FECO, Ltd.*, 469 F.3d 1027 (Fed. Cir. 2006); *Pixton v. B & B Plastics, Inc.*, 291 F.3d 1324 (Fed. Cir. 2002); *Applied Biosystems Group v. Illumina, Inc.*, 282 F. Supp. 2d 1120 (N.D. Cal. 2003); *Kunkel v. Topmaster Int'l, Inc.*, 906 F.2d 693 (Fed. Cir. 1990) (collectively with *Air Prod. & Chemicals, Inc.*, the "Air Prod. & Chemicals line of cases").

1       Comcast moved to dismiss this case under Rule 12(b)(1) for lack of subject  
 2 matter jurisdiction. DE 83. Comcast did not move to dismiss Entropic's claims for  
 3 non-willful patent infringement for failure to state a claim under Rule 12(b)(6). *Id.*  
 4 Comcast moved under Rule 12(b)(6) solely to dismiss Entropic's allegations of willful  
 5 conduct by Comcast in infringing. *Id.* In its Motion, Comcast argued that a Vendor  
 6 Support Agreement ("VSA") that Comcast Cable Communications Management, LLC  
 7 entered into with a third party—MaxLinear Inc.—contained a covenant not to sue that  
 8 deprived this Court of subject matter jurisdiction over Entropic's claims against  
 9 Comcast. *Id.* at 2:8–17. Comcast also argued that Entropic failed to plausibly allege  
 10 that Comcast willfully infringed Entropic's patents and, thus, its claims for willful  
 11 infringement should be dismissed for failure to state a claim. *Id.* at 2:18–24.

12       In preparing for the hearing on Comcast's Motion, Entropic determined that the  
 13 parties' briefing skipped past the foundational principle that a defense to a claim of  
 14 patent infringement based on a license or covenant not to sue does not deprive the Court  
 15 of subject matter jurisdiction, regardless of the content of the defense. Young Decl ¶ 4,  
 16 Ex. C at 69:17–20). Specifically, Entropic noted that Comcast's Motion relied solely  
 17 on Rule 12(b)(1) for dismissal of the case in its entirety and that all of Comcast's cases  
 18 supporting its arguments were either declaratory judgment cases where the patent  
 19 holder provided a covenant not to sue to the plaintiff or where the plaintiff patent holder  
 20 asked the Court to dismiss an action where it no longer wished to pursue infringement  
 21 claims. Ex. C at 70:2–5, 76:16–77:5, 76:15–24; DE 83-1 at 2:8–17, 17:11–18:19.  
 22 Entropic found case law clearly holding that in circumstances where the plaintiff patent  
 23 holder files a cause of action for patent infringement and does not seek to surrender its  
 24 suit, a covenant not to sue cannot deprive a court of subject matter jurisdiction. Ex. C  
 25 at 77:22–78:4, 78:21–25; DE 126 at 2:3–4:10. Upon discovering this authority,  
 26 Entropic promptly provided it to Comcast's counsel in advance of the hearing. Young  
 27 Decl ¶ 2, Ex. A; Ex. C at 75:3–7.

28

1       Shortly before the hearing on Comcast’s Motion, the Court issued a tentative  
2 ruling. Young Decl. ¶ 3, Ex. B. The tentative concluded that the VSA ran with the  
3 patents and, as a result, Entropic would need to allege willful infringement in order to  
4 pursue its claims. *Id.* The tentative then concluded that Entropic had not plausibly  
5 alleged willful infringement under Rule 12(b)(6), despite its many factual allegations to  
6 support it. *Id.*

7       At the hearing on these motions, Entropic discussed the new authority it had  
8 found that dealt a fatal blow to Comcast’s jurisdictional arguments. Ex. C at 77:22–  
9 78:4, 78:21–25. Entropic provided the Court and opposing counsel with a copy of the  
10 slide deck used by Entropic during the hearing to discuss these cases. *Id.* ¶ 5. These  
11 slides were then filed with the Court after the hearing. *See* DE 118. Entropic also  
12 provided the Court with copies of the new cases. Young Decl. ¶ 5.

13       During the hearing, Entropic explained that, because Comcast only moved to  
14 dismiss Entropic’s First Amended Complaint in its entirety based on a lack of subject  
15 matter jurisdiction, the Court need only make the following determinations:

- 16       • First, whether the VSA’s covenant deprived the Court of subject matter  
17 jurisdiction. If it does not, then Comcast’s motion under Rule 12(b)(1) must be  
18 denied. Ex. C at 81:4–8.
- 19       • Second, whether Entropic’s willfulness allegations were lacking under Rule  
20 12(b)(6). If they were lacking, then the Court could dismiss Entropic’s  
21 willfulness allegations, but the rest of Entropic’s Complaint would remain. Ex.  
22 C at 81:9–12.

23       The Court then asked whether the Parties wanted to file a supplemental brief on  
24 the subject matter jurisdiction issue and the additional cases discussed by Entropic. Ex.  
25 C at 103:7–8. Entropic responded that it would be happy to file a supplemental brief if  
26 it would assist the Court with the subject matter jurisdiction issue. Ex. C at 103:9–13.  
27 The Court then acknowledged that “this is an important issue” that was indeed  
28 “constitutional,” and that it “need[ed] to get it right.” Ex. C at 103:19–22. The Court

1 ordered Entropic to submit a five-page supplemental brief and ordered Comcast to  
2 submit a five-page responsive brief on the subject matter jurisdiction issue. Ex. C at  
3 104:1–11.

4 In its supplemental brief, Entropic explained that, regardless of the specific  
5 language of VSA’s covenant and whether it contained any exceptions, the covenant did  
6 not as a matter of law deprive this Court of subject matter jurisdiction. *See* DE 126.  
7 Entropic cited a slew of both binding and persuasive authority holding that a covenant  
8 not to sue cannot deprive a court of subject matter jurisdiction over an action for patent  
9 infringement where the patent holder is actively pursuing its infringement claims. *Id.*  
10 at 2:3–4:10. Rather, the covenant is a *defense* that goes to the merits of the claim. *Id.*  
11 Thus, as Entropic explained, Comcast’s Motion under Rule 12(b)(1) based on the  
12 VSA’s covenant must be denied. *Id.*

13 On November 20, 2023, this Court issued its Order on Comcast’s Motion, which  
14 was substantively identical to the Court’s Tentative Ruling. *See* DE 132. In particular,  
15 the Court held that it retained subject matter jurisdiction over “activities that the  
16 covenant does not cover.” DE 132 at 6. While the Order referenced and discussed the  
17 arguments made in the motion, opposition, and reply, the Order does not mention, nor  
18 did it analyze or discuss, the supplemental briefing, related arguments, or the line of  
19 cases including *Air Prod. & Chemicals*, which are dispositive of the Rule 12(b)(1) issue.  
20 *Id.*

### 21 **III. JUDICIAL STANDARD**

22 “[I]t is a clear error of law to not apply controlling” precedent. *See Smith v. Clark*  
23 *County Sch. Dist.*, 727 F.3d 950, 955 (9th Cir. 2013); *Kilopass Tech., Inc. v. Sidense*  
24 *Corp.*, 738 F.3d 1302, 1317 (Fed. Cir. 2013) (reversing district court for applying wrong  
25 legal standard); *see generally Preminger v. Sec’y of Veterans Affs.*, 517 F.3d 1299, 1309  
26 (Fed. Cir. 2008) (“A prior precedential decision on a point of law by a panel of this  
27 court is binding precedent and cannot be overruled or avoided unless or until the court  
28 sits en banc.”). A party may move for reconsideration where there exists “a manifest

1 showing of a failure to consider material facts presented to the Court before the Order  
2 was entered.” C.D. Cal. L.R. 7-18. Without doubt, reconsideration is also appropriate  
3 to correct a clear legal error. *McDowell v. Calderon*, 197 F.3d 1253 (9th Cir. 1999)  
4 (reconsideration appropriate to correct clear error); *School Dist. No. 1J, Multnomah*  
5 *County v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993) (reconsideration is  
6 appropriate if the movant demonstrates clear error, manifest injustice, newly discovered  
7 evidence, or an intervening change in controlling law).

8 Indeed, many courts within this District “have concluded that justice is best  
9 served by entertaining motions for reconsideration based on a perceived error of law to  
10 ensure that the court's prior order is not ‘infected with error.’” *Classical Silk, Inc. v.*  
11 *Dolan Grp., Inc.*, 2016 WL 7637668, at \*8 n.2 (C.D. Cal. Mar. 1, 2016) (collecting  
12 cases); *see also In re Countrywide Fin. Corp. Mortg.-Backed Sec. Litig.*, 966 F. Supp.  
13 2d 1031, 1040 (C.D. Cal. 2013) (considering motion for reconsideration based on clear  
14 error by district court); *In re Hewlett-Packard Co. Sec. Litig.*, 2013 WL 3582761, at \*1  
15 (C.D. Cal. June 17, 2013) (same); *Thomas v., Hous. Auth. of Cty. of Los Angeles*, 2005  
16 WL 6136322, at \*4 (C.D. Cal. Sept. 19, 2005) (courts have “inherent authority to  
17 reconsider interlocutory rulings at any time prior to final judgment”).

18 **IV. ARGUMENT**

19 **A. The Court should reconsider and amend its Order because it**  
20 **overlooked material authority and arguments on the important issue**  
21 **of subject matter jurisdiction.**

22 This Court has broad discretion to reconsider and modify its Order so as to  
23 address the pivotal binding authority on Comcast's jurisdictional arguments discussed  
24 at oral argument and in the parties' supplemental briefing. *See Milton H. Greene*  
25 *Archives, Inc.*, 568 F. Supp. 2d at 1162. Such reconsideration will benefit both parties  
26 by creating a complete record on this important issue, which will also aid in appellate  
27 review. *See* L.R. 7-18 (explaining that reconsideration is warranted where there has  
28 been a “manifest showing of a failure to consider material facts”); *see also Smith*, 727

1 F.3d at 955 (“It is common for both trial and appellate courts to reconsider and change  
2 positions when they conclude that they made a mistake. This is routine in judging, and  
3 there is nothing odd or improper about it. A trial court may reconsider and reach a  
4 conclusion contrary to an earlier decision, and a paradigmatic example of when this  
5 should be done is when the court made its prior decision without considering the legal  
6 standards in a controlling opinion . . .”); *Classical Silk*, 2016 WL 7637668, at \*8 n.2;  
7 *In re Countrywide Fin. Corp. Mortg.-Backed Sec. Litig.*, 966 F. Supp. 2d at 1040; *In re*  
8 *Hewlett-Packard Co. Sec. Litig.*, 2013 WL 3582761, at \*1; *Thomas*, 2005 WL  
9 6136322, at \*4.

10 Here, the Court’s reasoning for dismissing Entropic’s First Amended Complaint  
11 overlooked controlling facts and binding authority that were submitted in the parties’  
12 supplemental briefing and discussed at oral argument. *See generally* DE 132. The  
13 Court’s Order referenced, cited, and analyzed the parties’ initial briefing related to  
14 Comcast’s Motion, but **does not** discuss or even mention the supplemental briefing or  
15 the related precedent. *Id.* This, together with the Court’s correct observation that the  
16 subject matter jurisdiction issue was an “important” and “constitutional” one (Ex. C at  
17 103:19–23), suggests that the Court may have inadvertently rendered its Order without  
18 considering the parties’ supplemental briefing.

19 According to Entropic, that authority is dispositive of Comcast’s Rule 12(b)(1)  
20 Motion. Under that authority, which includes the *Air Prod. & Chemicals, Inc.* line of  
21 cases, the Federal Circuit is clear that where a plaintiff asserts a claim for patent  
22 infringement, the Court has federal question subject matter jurisdiction under 35 U.S.C.  
23 § 100 *et seq.*, and the inquiry ends there, **regardless** of the presence of a covenant not  
24 to sue. Ex. C at 75:16–24; DE 126; *See, e.g.*, *Air Prod. & Chemicals, Inc.*, 755 F.2d at  
25 1563–64 (“[T]he fact that a question of contract law must be decided prior to reaching  
26 the infringement question does not defeat federal subject matter jurisdiction. That  
27 resolution of a question of state law [holding a license valid] may render federal  
28 questions moot does not deprive a federal court of subject matter jurisdiction where the

1 plaintiff bases his claim upon, and seeks remedies under, the patent laws, even where  
2 the complaint anticipates a defense of license.”); *Pixton*, 291 F.3d at 1327 (“[T]his is an  
3 action for patent infringement in which the defendant has asserted the defense of  
4 license. Jurisdiction in the federal courts is not lost simply because the most efficient  
5 approach at trial may be to address the license defense first.”); *see also Applied*  
6 *Biosystems Group*, 282 F. Supp. 2d at 1121 (“[T]he jurisdictional test is satisfied. [The  
7 patent owner] has presented a well-pleaded complaint based on patent law and has  
8 requested the type of relief that patent law can furnish. [Alleged licensee’s] challenge  
9 is substantial and could indeed, if successful, stop these patent proceedings at their  
10 outset, but it must be directed at the merits of [Plaintiff’s] claim rather than at this  
11 court’s jurisdiction.”); *Kunkel*, 906 F.2d at 696 (“Kunkel’s complaint adequately  
12 pleaded a claim for patent infringement. . . . That Kunkel’s complaint also requests . .  
13 . rescission of contract cannot impair the federal district court’s ability to exercise  
14 jurisdiction over the action.”); *Highway Equip. Co., Inc.*, 469 F.3d at 1033 n.1 (“[T]he  
15 covenant does not deprive the district court of jurisdiction to determine the disposition  
16 of the patent infringement claims raised in the Complaint.”); *Cooper Notification, Inc.*,  
17 545 F. App’x at 967 (“[A] district court retains jurisdiction over claims in a patent suit  
18 . . . even if the patentee offers a covenant not to sue.”).

19 By failing to address this binding authority, the Court has left an open question  
20 as to whether it applies or is distinguishable. Both parties would benefit from the  
21 analysis of this binding authority, particularly given the importance of this issue as one  
22 that goes to the Court’s power to hear this case. *See Air Prod. & Chemicals, Inc. v.*  
23 *Reichhold Chemicals, Inc.*, 755 F.2d at 1564 (reversing and remanding district court’s  
24 erroneous decision that it lacks subject matter jurisdiction over dispute due to the  
25 defendant’s argument that it had a license to patents asserted against it).

26

27

28

**B. The arguments and authority that the Court overlooked were within the scope of the Court’s grant of supplemental briefing on Comcast’s Motion.**

4 Entropic’s supplemental briefing was well within the scope of the Court’s Order  
5 permitting such briefing. *See* Ex. C at 104:4–6 (setting a deadline for Entropic to submit  
6 supplemental briefing on the *Air Prod. & Chemicals* line of cases relating to the subject  
7 matter jurisdiction issue); DE 122; DE 126. As such, Entropic’s arguments, along with  
8 the binding and persuasive authority, in that briefing should have been considered and  
9 addressed in the Order.<sup>4</sup> Thus, the Order’s failure to consider this material, which  
10 includes binding authority like *Air Prod. & Chemicals*, is clear error and has resulted in  
11 manifest injustice that justify reconsideration. *See School Dist. No. 1J, Multnomah*  
12 *County*, 5 F.3d at 1263 (reconsideration is appropriate if the movant demonstrates clear  
13 error, manifest injustice, newly discovered evidence, or an intervening change in  
14 controlling law).

C. The Court should reconsider and amend its Order to enable the parties to have a complete record, including for purposes of appellate review.

18 Both parties would benefit from the Court’s analysis of the important issues and  
19 authority raised in the supplemental briefing, so as to make a complete record, including  
20 for appellate review. The failure to consider dispositive authority could hinder the  
21 Federal Circuit’s ability to provide full and complete review of the Order and could  
22 result in a remand for further proceedings to address such authority. *See, e.g., ABC*  
23 *Corp. I v. P’ship & Unincorporated Associations Identified on Schedule “A”*, 52 F.4th

<sup>4</sup> Indeed, in cases where courts denied reconsideration for failure to consider supplemental briefing, the moving party's briefing was outside the scope of subject matter permitted by court. *See, e.g.*, *In re Northrop Grumman Corp. ERISA Litig.*, 2016 WL 11746546, at \*8 (C.D. Cal. Mar. 31, 2016) (denying motion for reconsideration where "the Court specifically and thoroughly addressed the precedent [to be discussed in proposed supplemental briefing] in its order"); *see also Del Webb Communities Inc. v. Arch Ins. Co.*, 2015 WL 12734078, at \*2 (C.D. Cal. May 29, 2015) (noting that the Court may refuse to consider "evidentiary materials submitted *outside the scope of a request for supplemental briefing*.")) (emphasis added).

1 934. 941–42 (Fed. Cir. 2022) (reversing and remanding based on district court’s  
2 application of incorrect standard for determining likelihood of success on the merits in  
3 patent infringement case); *Elec. Commc’n Techs., LLC v. ShoppersChoice.com, LLC*,  
4 963 F.3d 1371, 1380 (Fed. Cir. 2020) (reversing and remanding for further proceedings  
5 based on, *inter alia*, district court applying incorrect statute); *see also Bryant v. Dep’t of  
6 Veterans Affs.*, 26 F.4th 1344, 1347 (Fed. Cir. 2022) (“Because the deciding official  
7 used the incorrect standard of proof in reaching the final decision here, we vacate the  
8 Board’s decision as to the underlying removal and remand to the Board for further  
9 proceedings under the correct legal standard.”); *In re Tropp*, 748 F. App’x 1022, 1024  
10 (Fed. Cir. 2018) (vacating decision and remanding for further proceedings due to failure  
11 to consider totality of record, which constituted legal error); *Celgard, LLC v. LG Chem, Ltd.*,  
12 624 F. App’x 748, 751–52 (Fed. Cir. 2015) (reversing issuance of preliminary  
13 injunction and remanding due to clear error based on district court’s failure to consider  
14 whether it had personal jurisdiction over party); *Transocean Offshore Deepwater  
15 Drilling, Inc. v. Maersk Contractors USA, Inc.*, 617 F.3d 1296, 1305 (Fed. Cir. 2010)  
16 (reversing grant of summary judgment and remanding based on district court’s clear err  
17 in failing to consider plaintiff’s objective evidence of nonobviousness); *In re Sullivan*,  
18 498 F.3d 1345, 1353 (Fed. Cir. 2007) (vacating and remanding for further Board  
19 proceedings due to clear error by failure to consider rebuttal evidence). Thus,  
20 reconsideration will further the interests of efficiency and conserve judicial resources  
21 by addressing the overlooked briefing and authority now.

22 Finally, the Court should reconsider its Order because, since it retains jurisdiction  
23 over this action based on the *Air Prod. & Chemicals* line of cases, Entropic’s First  
24 Amended Complaint should not have been dismissed at all. As discussed above,  
25 Comcast did not move to dismiss Entropic’s entire First Amended Complaint under  
26 Rule 12(b)(6)—it moved to dismiss only willful infringement. What’s more, given the  
27 VSA’s numerous amorphous provisions, the Court should decline to adopt a definitive  
28 meaning and effect of the VSA before the parties have engaged in (and complied with)

1 full discovery on such issues, including Comcast Cable's and MaxLinear's intent  
2 behind the VSA's provisions.<sup>5</sup> Indeed, the Court's Order contains material  
3 inconsistencies in its approach to the VSA in that it deferred to the Southern District of  
4 New York ("SDNY") to interpret the VSA's termination provisions, yet the Court  
5 reached conclusions about other provisions of the VSA that may affect SDNY's  
6 interpretation or the overall result of MaxLinear's termination. *See* DE at 132 at 7–8.  
7 Rather, than making piecemeal decisions about the interpretation of specific portions of  
8 the VSA that are spread across two district courts, this Court should amend its Order to  
9 avoid any such definitive determinations about the VSA's meaning at this time given  
10 that the VSA does not raise a jurisdictional issue under Rule 12(b)(1), as per the *Air*  
11 *Prod. & Chemicals* line of cases.

12 **V. CONCLUSION**

13 Based on the foregoing, Entropic requests the Court grant this Motion.

14 Dated: December 4, 2023

15 Respectfully submitted,

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28 <sup>5</sup> Comcast continues to resist discovery regarding the VSA and its willful  
infringement, which is Special Master proceedings and further meet and confers.

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## **CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for Plaintiff Entropic Communications, LLC, certifies that this brief contains 3,388 words, which complies with the word limit of L.R. 11-6.1.

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**ENTROPIC'S MOTION FOR RECONSIDERATION**

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